

# **HB 87**

Measure Title: RELATING TO PUBLIC HOUSING.

Report Title: Criminal Trespass; Public Housing Project

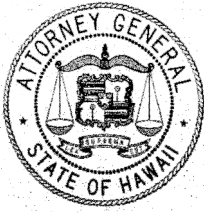
Description: Broadens criminal trespass in the first degree to include a person who enters or remains unlawfully in or upon the premises of a public housing project after a reasonable request or warning to leave by housing authorities or a police officer. Excludes an invited guest, unless the guest is violating a law or rule.

Companion:

Package: None

Current Referral: HMS, JDL

Introducer(s): RHOADS



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 87, RELATING TO PUBLIC HOUSING.

**BEFORE THE:**

SENATE COMMITTEE ON HUMAN SERVICES

**DATE:** Saturday, March 9, 2013

**TIME:** 3:00 p.m.

**LOCATION:** State Capitol, Room 229

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Laura Maeshiro, Deputy Attorney General.

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Chair Chun Oakland and Members of the Committee:

The Department of the Attorney General supports the intent of this measure but offers the following comments and recommendations.

The purpose of this bill is to create an offense of criminal trespass in the first degree applicable to public housing projects.

In the interest of making the bill clearer and eliminating the possibility of a successful constitutional challenge, we propose the following amendments on page 2, lines 6-13:

That person enters or remains unlawfully in or upon the premises of any public housing project, as defined in section 356D-1 or 356D-91, after a reasonable warning or request to leave by housing authorities or a [police] law enforcement officer [;], based upon an alleged violation of law or administrative rule; provided that[;] a warning or request to leave shall not be necessary between 10:00 p.m. and 5:00 a.m. at any public housing project that is closed to the public during those hours, and has signs, containing letters not less than two inches in height, placed along the boundary of the project property, at all entrances to the property, in a manner and position to be clearly noticeable from outside the boundary of the project property and to give sufficient notice that the public housing project is closed to the public during those hours.

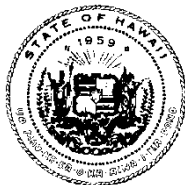
Lines 11-13 should then be deleted.

The proposed amendment to base the warning or request to leave upon a violation of law or administrative rule will provide specific standards (namely, housing project rules or statutory laws) to guide the issuance of reasonable warnings or requests to leave, thereby rendering frivolous any suggestion that the bill provides unlimited discretion to those issuing requests to leave. And because the warning or request to leave will be based upon a violation of law or

administrative rule, the exception for an "invited guest," at line 13, should be deleted because the definition of an "invited guest" excludes those who violate any law or administrative rule. With the deletion of the "invited guest" exception, the definition for "invited guest" at lines 18-21, on page 2, should also be deleted.

The Department also has concerns about the exception to the warning requirement for the time period between 10:00 p.m. and 5:00 a.m. The public has to be given sufficient notice of the closure of the property during this period. To enforce this time period prohibition, it is proposed that the boundaries of the public housing premises need to be clearly identifiable to the general public and marked with visible warning signs.

NEIL ABERCROMBIE  
GOVERNOR



HAKIM OUANSAFI  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**  
DEPARTMENT OF HUMAN SERVICES  
HAWAII PUBLIC HOUSING AUTHORITY  
1002 NORTH SCHOOL STREET  
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO  
EXECUTIVE ASSISTANT

Statement of  
**Hakim Ouansafi**  
Hawaii Public Housing Authority  
Before the

**SENATE COMMITTEE ON HUMAN SERVICES**

March 9, 2013 3:00 P.M.  
Room 229, Hawaii State Capitol

In consideration of

**House Bill 87**  
**Relating to Public Housing**

Honorable Chair Chun Oakland and Members of the Senate Committee on Human Services, thank you for the opportunity to provide you with comments regarding House Bill (H.B.) 87, relating to public housing.

The Hawaii Public Housing Authority (HPHA) strongly supports enactment of this measure which amends criminal trespass in the first degree to include public housing projects. The HPHA continues to make improvements to security measures at many of our high risk housing projects, including additional fences, security fences, and photo IDs for tenants. Enactment of this measure will significantly improve the ability of the HPHA to ensure a secure, livable community for our residents. The HPHA will continue to work with local law enforcement and security personnel to refine our policies and procedures to effectively apply the provision, along with other necessary security improvements.

The HPHA appreciates the opportunity to provide the Senate Committee on Human Services with the agency's position regarding H.B. 87. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support.



Committee: Committee on Human Services  
Hearing Date/Time: Saturday, March 09, 2013, 3:00 p.m.  
Place: Conference Room 229  
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 87, Relating to Criminal Trespass on Premises of Public Housing

Dear Chair Chun Oakland and Members of the Committee on Human Services:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 87, which seeks to broaden criminal trespass in the first degree to include a person who enters or remains unlawfully in or upon the premises of a housing project after a reasonable request or warning to leave by housing authorities or a police officer, for the following reasons:

**H.B. 87 is unnecessary because the police already have the authority to physically arrest those charged with Simple Trespass.**

House Stand. Comm. Rep. No. 330-08 (2008) states that “HPD indicated that public housing projects are considered a quasi-private area, which has prevented arrests for public consumption of liquor and trespassing. This measure would allow arrests to be made.”

This proffered justification for this bill (which is similar to that proposed for Act 50 of 2004) is patently false. First, the offense of simple trespass as set forth in H.R.S. § 708-815 applies to “premises” which is defined as any building or real property and includes public housing projects. Second, H.R.S. § 803-6(b) specifically authorizes the optional use of a citation by the police in lieu of an arrest where the offense involved is “a misdemeanor, petty misdemeanor or violation.” For over 25 years, it has been clear that §803-6(b) allows police to physically arrest an individual for a violation.<sup>1</sup> Indeed, in enacting §803-6(b), the Legislature intended to “provide for an optional use of the citation in lieu of arrest. The police officer could still make a physical arrest if the situation necessitated such an action.”<sup>2</sup>

**Extending the Criminal Trespass Statute to public housing poses grave constitutional concerns similar to those of Act 50 of 2004**

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<sup>1</sup> State v. Kapoi, 64 Haw. 130, 637 P.2d 1105 (1981) (holding, inter alia, that physical arrest for simple trespass was authorized by §806-3(b)).

<sup>2</sup> House Stand. Comm. Rep. No. 712 (1975), House Journal, at 1303 (emphasis added).

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Chair Chun Oakland and Members of the Committee on  
Human Services

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Extending the current criminal trespass law to quasi-public property poses grave constitutional concerns similar to those of Act 50 of 2004. As some members may recall, in 2004, to combat the “squatting” problem, the legislature proposed an amendment to H.R.S. § 708-814 that simply inserted the words “public property” two times into an existing criminal trespass statute that had applied to commercial premises only. Act 50 of 2004 amended H.R.S. § 708-814 (hereinafter referred to as “Act 50” or §”708-814”) to transform it into a vaguely worded law sweeping in its scope. By its very terms, §708-814 provided that anyone could be banned from public property for up to one-year simply by being given a written trespass warning “stating that the individual’s presence is no longer desired on the property.”<sup>3</sup>

Although Act 50 of 2004 was proposed to the Hawaii legislature as a necessary tool to combat the homelessness problem, Act 50 was nothing less than a return to the street-sweeping laws of America’s past and no different in substance than those constitutionally infirm laws.

On September 7, 2004, the ACLU of Hawaii filed a lawsuit challenging the validity of Act 50 as to public property on the grounds that it was unconstitutional and gave public officials overly broad powers to ban individuals from using public spaces such as beaches, streets or sidewalks. The lawsuit was based on over six decades of U.S. Supreme Court precedent that condemned the inherent vagueness of laws like the challenged statute. The lawsuit was additionally premised on settled principles of due process as well as the fundamental right to move freely (which is protected under both the U.S. Constitution and Article I, § 2 of the Hawaii Constitution) and traditional First Amendment freedoms.

In 2005, the Legislature, mindful of the sweeping and unintended impact of Act 50, recognized the call to repeal Act 50 and did so for the benefit of all residents and visitors to Hawaii.

### **H.B. 87 Is Potentially More Dangerous Than Act 50 of 2004**

Given the nature of public housing projects, the proposed bill may pose even greater dangers than Act 50. For example, it is possible that the grounds of a particular public housing development should be treated as a public forum. Restricting access to these areas (which are public in nature) would overextend trespass statutes and may very well violate the free speech and association rights of both tenants and visitors.

If passed, H.B. 87 will make entering and remaining unlawfully in state and federal low-income

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<sup>3</sup> H.R.S. § 708-814(1)(b) (2004).

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Human Services

March 09, 2013

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public housing punishable by criminal trespass in the first degree and will result in overly harsh punishments, over-incarceration and wasted state money. This unnecessary, misguided and potentially unconstitutional measure does not accurately reflect sound public policy. We strongly urge this committee to oppose H.B. 87.

Thank you for this opportunity to testify.

Sincerely,  
Laurie A. Temple  
Staff Attorney and Legislative Program Director  
ACLU of Hawaii

*The American Civil Liberties Union ("ACLU") is our nation's guardian of liberty - working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.*

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